

ORISSA HIGH COURT

Balabhadra Raja Guru Mohapatra

Vs

State (Orissa)

Criminal Revn. No. 43 of 1951

(Panigrahi and Narasimham, JJ.)

08.12.1950. 15.01.1953

JUDGMENT

Panigrahi, J

1.This is a revision petition directed against the judgment of the Additional Sessions Judge confirming a judgment of the Subdivisional Magistrate, Rayagada convicting the petitioner for contravention of Cl. III(1), Orissa Food Grains Control Order, 1947. The case against him is that he was found carrying 50 bags or 100 maunds of ragi in a truck on 4.8.1950 to Jemidipeta beyond the border of Orissa. The plea of the petitioner was that he had purchased it for himself and 9 others at Kakirigumma and that he was taking the goods to Pitamahal. The Orissa Food Grains Control Order of 1947 is an order passed by the State Government with the concurrence of the Central Government under Section 3(1), Essential Supplies (Temporary Powers) Act, 1946 (24 of 1946). Clause III(1) of the Orissa Order is as follows :

"III. (1) No person shall engage in any undertaking which involves the purchase, sale or storage for sale in wholesale quantities of any food-grains except under and in accordance with a licence issued in that behalf by the Director of Food Supplies :

x x x x

Explanation (2) - For the purpose of this clause any person who stores Mung and Biri or their products in quantities exceeding 20 standard maunds and other food-grains in quantities exceeding 50 standard maunds, shall unless the contrary is proved be deemed to store the food-grains for purposes of sale."

Both the courts below have found that the goods found loaded in the truck belonged to the accused as indeed they were claimed by him to be his and the plea put forward by the accused that they had been purchased for others was disbelieved. It must, therefore, be found as a fact that 100 maunds of ragi found in the truck belonged to the petitioner. The next question is whether his

possession of the goods while in transit in a truck can be described as "storage" within the meaning of the Control Order. The learned Additional Sessions Judge has said :

"storage does not necessarily mean stocking in a house or at a particular place. Its ordinary dictionary meaning is "the placing in a store".

There may be a case in which a seller may be carrying goods for purpose of sale in a vessel and may be selling all along the route. It cannot be said that the goods kept by him are not stored by him. I would, therefore, agree with the Sessions Judge that the find of the goods in the truck was a storage within the meaning of the Control Order. What the order prohibits is storage in wholesale quantities which means storage in quantities exceeding 20 maunds for purpose of sale. But clause 111(2) prescribes that where any person is found storing in quantities exceeding 50 maunds, he shall, unless the contrary is proved, be deemed to store the food-grains for the purpose of sale. We cannot therefore escape from the conclusion that the storage by the petitioner was for purpose of sale apart from the evidence in the case. Both the Courts have held as a fact that the petitioner was transporting goods for sale within the Madras area. If, therefore, it be held that the petitioner was found storing food-grains exceeding 50 maunds, it must also be found that it was for the purpose of sale. Mr. Chatterjee has, however, raised an interesting point of law which led this case being, referred to a Bench. His contention is that the expression 'undertaking' used in clause III (1) should be understood in the sense of a general course of business carried on by the storer and would exclude the case of a solitary transaction such as has been proved against the petitioner in this case. Our attention is drawn to a case reported in - '*Kamla Prasad v. Emperor*', That was a case in which the Food-grains, Control Order, 1942 was one promulgated under Rule 81(4), Defence of India Rules. The language employed in clause III(1) is identical with that in the Orissa Food Grains Control Order. Das, J., held that the expression 'undertaking' used in the Control Order should have the same meaning as it has in Rule 81, Defence of India Rules. The expression 'undertaking' is defined in the Defence of India Rules by Rule 81(1) as meaning any undertaking "by way of any trade or business". It was, therefore, held in that case that the expression 'undertaking' used in the Control Order should have the same meaning as defined in the parent Rule 81, Defence of India Rules under which the order purports to have been made. This case, however, is easily distinguishable from the present one as the Orissa Control Order does not purport to have been made under the Defence of India Rules. The Central Act 24 of 1946 under which the Orissa Control Order of 1941 has been made does not define the word 'undertaking' as it had been defined in the Defence of India Rules. It may well be that the omission of the definition in the present Act was intended to expand the meaning of the expression and make it applicable to transactions other than those carried on in the course of business or as a part of it. Even if the contention of Mr. Chatterjee were to be accepted, viz., that it was a solitary transaction, I would hold that the act of storage alleged against him was for business and would come within the meaning of an 'undertaking' used in clause III(1) of the Orissa Control Order. I would, therefore, hold that the Courts below were right in holding that the petitioner was engaged in an undertaking which involved the storage for sale of more than. 50

maunds and accordingly had contravened the provision of Cl. III(1). It was, however, pointed out that Schedule III which prescribes the form of license intended to be used by those who are engaged in the business of purchase or sale, use the word 'business' and that the meaning of the word 'undertaking' should therefore be restricted only to business. It is well known that a Schedule to an Act does not control the meaning of the expressions used in the Act and is subordinate to the Act itself. It may be that the word 'business' used in the Schedule may also include a singular act of business provided it involves buying and selling. But that question does not arise in the present case. I am satisfied that the act proved against the petitioner amounts to contravention of the provisions of Cl. III(1). He has, therefore, been rightly convicted and I see no reason to interfere with the sentence of fine imposed on him. This revision is accordingly dismissed.

Narasimham, J.

2. I agree.

Revision dismissed.

Cases Referred.

¹ AIR 1948 Pat 8